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Nos. 95-1478 and 96-1503

**IN THE SUPREME COURT OF THE UNITED STATES**
*October Term 1996*

**JAY PRINTZ, Sheriff/Coroner,**
**Ravalli County, Montana**
*Petitioner,*
vs.
**UNITED STATES OF AMERICA,**
*Respondent.*

**SHERIFF RICHARD MACK,**
*Petitioner,*
vs.
**UNITED STATES OF AMERICA,**
*Respondent.*

**ON WRITS OF CERTIORARI**
To the United States Court of Appeals
For the Ninth Circuit

# BRIEF OF AMICI CURIAE STATES COLORADO, IDAHO, KANSAS, MONTANA, NEBRASKA, SOUTH DAKOTA, VIRGINIA, AND WYOMING

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## INTERESTS OF AMICI

Amici curiae States have a direct interest in the protection of their sovereignty under our federal system. A core power of the States is their ability to respond to the wishes of their populace, expressed in a republican form of government, and to establish the laws that will govern the conduct of their own officials. At issue in this case is whether Congress has unconstitutionally attempted to make the States mere administrative subdivisions of the federal government contrary to the sovereign powers reserved to them by the Tenth Amendment. As detailed below, the Brady Act imposes significant demonstrable burdens on the States -- conscripting state resources and officials, while blurring political accountability.

Amici States have a variety of firearms laws which have been enacted by their respective legislatures. While amici have very diverse views on the merits of laws such as the Brady Act, they are not here to argue over the wisdom of such laws. The amici States appear before the Court to ask that it recognize a simple tenant of federalism: Congress cannot conscript state officials to enforce its regulatory schemes without violating the Tenth Amendment.

## SUMMARY OF ARGUMENT

This case represents a simple, straight-forward application of *New York v. United States*. Congress has commandeered state and local law enforcement officials to administer its federal program regulating handgun sales, and, in so doing, has violated the Tenth Amendment.

There is no "de minimis" exception to the Tenth Amendment. Even if there were, the burdens the mandate provisions of the Brady Act impose on state government and

state sovereignty are far too significant to pass constitutional muster.

The mandate provisions of the Brady Act violate the Guaranty Clause. The Act seriously interferes with the States' ability to manage their own law enforcement officials, and it improperly makes state and local officials accountable for policy decisions made by Congress.

*Garcia* has shown itself to be unworkable as exemplified by the litigation over the Brady Act. It should, accordingly, be overruled.

## ARGUMENT

### I. THE BRADY ACT COMMANDEERS STATE AND LOCAL OFFICIALS CONTRARY TO *NEW YORK V. UNITED STATES*.

This is a simple case. In *New York v. United States*, 505 U.S. 144, 112 S. Ct. 2408 (1992), the Court stated that Congress may not "'commandeer' state governments into the service of federal regulatory purposes." 112 S. Ct. at 2428. Such commandeering would "be inconsistent with the Constitution's division of authority between federal and State governments." *Id.* This simple, bright-line rule is based on the indisputable constitutional fact that "[s]tate governments are neither regional offices nor administrative agencies of the Federal Government. The positions occupied by state officials appear nowhere on the Federal Government's most detailed organizational chart. . . . Whatever the outer limits of [state] sovereignty may be, one thing is clear: the Federal government may not compel the states to enact *or administer*

a federal regulatory program." *New York v. United States*, 112 S. Ct. at 2434-35 (emphasis added).

The mandate provisions of the Brady Act[1] are at least an equally extreme intrusion into state sovereignty as the scheme invalidated in *New York v. United States*. The States are required to expend substantial state resources to implement the federal regulations Congress imposed on them. Moreover, Congress has directly conscripted state and local law officials to do its bidding.[2]

In the decision below, the Ninth Circuit invented a rule that while the federal government may not order States to promulgate laws or regulations, the federal government may help itself to state employees, and order them to serve federal ends. The Ninth Circuit reasoned that commandeering at least a portion of the executive branch of state government is acceptable, while conscripting legislative functions is not. This "standard" gives far too little weight to state sovereignty. The legislative branch is not the only state function protected from commandeering by Congress. The Constitution also protects the other functions from federal conscription. *See Gregory v. Ashcroft*, 501 U.S. 452, 463 (1991) (Tenth Amendment and Guaranty Clause protect State's right to "determine the qualifications of their most important government officials," in that case, judicial

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[1] 18 U.S.C. §§ 922(s)(2), 922(s)(6)(B), 922(s)(6)(C). The Amici States take no position as to the other provisions of the Brady Act, nor do they address the issue of severability raised by the parties.

[2] The court in *New York v. United States* recognized that Congress may have alternative means available to it to accomplish its objectives not involving commandeering state and local officials. 112 S. Ct. at 2423-24. Those alternatives, however, are not now before the Court.

officials). *See also FERC v. Mississippi*, 456 U.S. 742, 777 (1982) (O'Connor, J., dissenting) ("[s]tate . . . administrative bodies are not field offices of the national bureaucracy").

Congress cannot make state and local officials "law enforcement functionaries in carrying out a federal program" as the Ninth Circuit suggested below. The Ninth Circuit's attempt to put the plain language of *New York v. United States* "in context" is also unavailing. "The federal government may not compel the states to enact *or administer* a federal regulatory program." *New York v. United States*, 112 S. Ct. at 2475 (emphasis added).

The bright-line, no-commandeering test in *New York v. United States* avoids the problem created by *National League of Cities v. Usery*, 426 U.S. 833, 845-46 (1976), in determining what constitutes a "traditional" government function. It also is consistent with history dealing with the proper role of the States under the Constitution. *New York v. United States*, 112 S. Ct. at 2418-19. Assessed against this proper test, the commandeering facets of the Brady Act must fail.

## II. THE TENTH AMENDMENT CONTAINS NO "DE MINIMIS" EXCEPTION. EVEN IF IT DID, THE BRADY ACT PLACES A SIGNIFICANT BURDEN ON STATE AND LOCAL LAW ENFORCEMENT AND STATE SOVEREIGNTY.

### A. THERE IS NO "DE MINIMIS" EXCEPTION TO THE TENTH AMENDMENT.

Proponents of the mandate provisions of the Brady Act sometimes attempt to justify them as a "de minimis" intru-

sion on state sovereignty. A "de minimis" exception, however, is inconsistent with the bright-line rule, discussed above, adopted by the Court in *New York v. United States*. *See also New York v. United States*, 112 S. Ct. at 2429 (rejecting "balancing test" urged by the United States; "No matter how powerful the federal interest involved, the Constitution simply does not give Congress the authority to require the States to regulate.").

This Court, moreover, has recognized the insidiousness of such "incrementalism" as embodied in the purported "de minimis" exception to the Tenth Amendment. Constitutional freedoms are rarely destroyed all at once. "Of course no one expects Congress to obliterate the States, at least in one fell swoop. If there is any danger, it lies in the tyranny of small decisions -- in the prospect that Congress will nibble away at state sovereignty, bit by bit, until someday essentially nothing is left but a gutted shell." J. Lipner, *Imposing Federal Business on Officers of the States: What the Tenth Amendment Might Mean* 57 Geo. Wash. L. Rev. 907, 912 (1989) (quoting L. Tribe, American Constitutional Law 381 (1988)).

Even accepting Respondents' assertions that all of the Brady Act's intrusions into state sovereignty are minimal, they are still illegitimate. "Those who framed our Constitution and the Bill of Rights were ever aware of subtle encroachments on individual liberty. They knew that 'illegitimate and unconstitutional practices get their first footing . . . by silent approaches and slight deviations from legal modes of procedure.'" *Miranda v. Arizona*, 384 U.S. 436, 459 (1966) (quoting *Boyd v. United States*, 116 U.S. 616, 635 (1886)). Nor is there any constitutional significance to the federal government's claims about the laudable objectives behind the intrusions the mandate provisions of the Brady Act make into state sovereignty. "Experience

should teach us to be most on our guard to protect liberty when the government's purposes are beneficent. . . . The greatest dangers to liberty lurk in insidious encroachment by men of zeal, well-meaning, but without understanding." *Olmstead v. United States*, 277 U.S. 438, 479 (1928) (Brandeis, J., dissenting), *overruled by*, *Katz v. United States*, 389 U.S. 347, 353 (1967). *See also New York v. United States*, 112 S. Ct. at 2429 (rejecting "balancing test," discussed above).

The Ninth Circuit adopted a "de minimis" standard that Congress may not impose so many "all consuming" burdens that the States are stalled "in their tracks." This "test" is wholly subjective and totally unworkable. Is a state "stalled in its tracks" if its judicial branch is totally conscripted by Congress, so long as its legislative and executive branches are free to function? State sovereignty should not hinge on such a subjective and standardless determination by a federal court.[3] There is no "de minimis" exception to the Tenth

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[3] The Ninth Circuit's purported "de minimus" standard is analogous to a First Amendment "de minimis" exception in which newspapers could be ordered to print congressionally-written content, so long as there was still some room in the newspaper remaining for the paper's owners to print content of their own choosing. However: "Even if a newspaper would face no additional costs to comply with a compulsory access law and would not be forced to forgo publication of news or opinion by the inclusion of a reply," mandated content is a *per se* interference with a newspaper's editorial discretion. "[T]he exercise of editorial control and judgment," free of government mandates, is a part of the protected core of the First Amendment. *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 258 (1974). Similarly, the exercise of control and judgement by policy-making officials in the fundamental, traditional state function of law enforcement is part of the protected core of the

(continued...)

Amendment, and this case, in any event, is certainly not within any de minimis category.

## B. THE BRADY ACT IMPOSES A SIGNIFICANT BURDEN ON STATE SOVEREIGNTY.

Sheriffs Mack and Printz, in their briefs, detail the large burden personally imposed on them by the mandate provisions of the Brady Act, and how the Act interferes with the performance of their duties. Those provisions of the Brady Act also impose significant burdens on state law enforcement nationwide.

In calendar year 1995, there were 26 states that were not exempt from the Brady Act.[4] In 1995, there were 1,614,736 "code F" requests[5] made on the Federal Bureau

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[3](...continued)
Tenth Amendment, and such indicia of sovereignty should be afforded equal constitutional protection as that afforded individuals under the First.

[4] Alabama, Alaska, Arizona, Arkansas, Georgia, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nevada, New Mexico, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, Rhode Island, South Carolina, South Dakota, Texas, Vermont, Washington, West Virginia and Wyoming. North Carolina became an exempt State on December 1, 1995, but is included for the entire year for purposes of calculating the averages discussed below. This information was obtained from the Office of Liason and Public Information, Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms.

[5] "Code F" requests include Brady Act checks, other (continued...)

of Investigation's Interstate Identification Index as accessed through the National Criminal Investigation Center ("NCIC") for the 26 non-exempt states.[6] This equates to 62,105 "code F" checks per State per year. Assuming that half of the "code F" checks are Brady Act checks,[7] each State was forced to make 31,052 Brady Act checks in 1995, and all of the non-exempt States were forced to make 807,368 Brady Act checks in that year.

Referring to the evidence presented by Sheriff Frank in *Frank v. United States*, 78 F.3d 815 (2d Cir. 1996), a Brady Act check can take anywhere from 15 minutes to six hours. 78 F.3d at 830. Assuming, conservatively, that the average background check took only one hour,[8] state and local law

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[5](...continued)
firearms checks, and checks made for such things as concealed-carry permit requests. Colorado, in 1995, had 71,806 "code F" requests according the Federal Bureau of Investigation. According to the Colorado Bureau of Investigation, 52,894 of those checks related to applications under Colorado's Instant Background Check System. It is, therefore, a reasonable assumption that at least half of the "code F" requests made by the non-exempt States related to Brady Act checks.

[6] This data was obtained from the Federal Bureau of Investigation's Criminal Justice Information Services Division. The monthly data for 1995 was compiled for the 26 non-exempt States.

[7] *See supra* note 5.

[8] The testimony of Sheriffs Frank and Printz support this assumption – a very conservative one considering that the Brady Act requires:

(continued...)

enforcement officials spent 807,368 hours in 1995 alone performing Brady Act checks. For the 26 non-exempt States, that is approximately 31,052 hours per State in 1995.

Brady Act checks consist of more than simply checking the NCIC. The sheriff or police chief must conduct an investigation "including research in whatever State and local recordkeeping systems are available and in a national system designated by the Attorney General." 18 U.S.C. § 922(s)(2). The mandatory research into the national system "and" into "whatever state and local recordkeeping systems are available" is conjunctive. Under the plain statutory language, researching the national system is necessary but not sufficient.[9] The NCIC contains records of felony arrests (and

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[8](...continued)

(a) a background check, 18 U.S.C. § 922(s)(2), where the information on the federal form is often incomplete or the information obtained from a check prompts further inquiry;
(b) destruction of records if the search uncovers no negative information, *id.*, § 922(s)(6)(B); and
(c) the provision of an explanation if approval for a sale is denied, *id.*, § 922(s)(6)(c).

Colorado's experience for 1995 showed a denial rate of approximately 6 percent (3,069 out of 52,894). Assuming that state and local law enforcement officials are forced to explain their decisions only 6 percent of the time, undoubtedly such explanation and dealing with disgruntled would-be purchasers, including potential litigation with them, will significantly impact the average time spent on each background check.

[9] Statements from the United States Department of Justice about how much effort is required by state and local law enforcement officials under the Brady Act do not, of course, (continued...)

sometimes, but often not, felony convictions), fugitive warrants, and indictments. There are six other federal disqualifying categories,[10] none of which are contained in the NCIC database, most of which are not contained in any consolidated database.

The overwhelming mass of man hours necessary to implement the mandate provisions of the Brady Act are to be supplied by state employees. Federal employees have a much more minor role. They may prosecute private citizens who violate the Act (there have been fewer than a dozen prosecutions so far); they provide limited assistance to the sheriff or police chief by operating the NCIC and the FBI's Interstate Identification Index; and they may prosecute, or threaten to prosecute, state employees who refuse to implement the federal regulatory scheme.

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[9](...continued)
change the actual language of the statute, nor do they provide any assurance the Department of Justice policy will continue once this litigation is resolved. Moreover, nothing the Department of Justice can say can change the civil liability that is created by the Brady Act, 18 U.S.C. § 925A, and the enormous pressure such liability creates on local government. That section expressly provides a civil remedy to persons denied a firearm as a result of the mandatory background check, including a potential award to those persons of attorneys fees. Potential liability for attorneys fees is especially threatening to state and local officials who are forced to operate under very tight budget restraints.

[10] 18 U.S.C. § 922(d) (users of or addicts to controlled substances; certain persons with mental illness; illegal aliens; persons dishonorably discharged from the armed forces; persons who have renounced citizenship; and persons who are the subject of certain court orders related to domestic violence).

Enforcement of this federal mandate is the most coercive sort possible: state officers who fail to comply with this federal command are subject to criminal penalties. 18 U.S.C. § 924(a)(5). That section provides that "*whoever*" violates the background check portions of the statute -- which expressly reference state and local law enforcement officials -- "shall be fined not more than $1,000, imprisoned for not more than one year, or both." That the Department of Justice may choose not to initiate criminal prosecutions in the instant cases is no guarantee that it will so refrain in the future. Such assurances are certainly hollow with respect to the new laws that will inevitably be enacted if the conscription component of the Brady Act is allowed to stand, laws that will impose more criminal penalties on more state employees who fail to carry out Congress' bidding at state expense.

Many States have exempted themselves from the Brady Act by enacting other forms of background checks. Such checks can include a licensing system for handgun owners, or an immediate computer background check, performed by a central state criminal records agency. *See, e.g.*,. Colo. Rev. Stat. §§ 12-26.5-101 - 109 (Colorado Instant Criminal Background Check System).[11]

However, the fact that some States have enacted exempting legislation to mitigate the more coercive effects of the Brady Act does not negate the existence of a Tenth Amendment violation. As explained in *FERC v. Mississippi*, 456 U.S. 742, 761 (1982), the lawmaking power is the essence of state sovereignty. If the States must enact particular legislation in order to reclaim the full right to control the duties of their sheriffs and chiefs of police, then Congress

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[11] The State of Colorado budgeted $434,000 in fiscal year 1995-96 to administer its Instant Background Check System.

has mandated a second violation of the Tenth Amendment as a "protection" against the first violation. *See New York v. United States*, 112 S. Ct. at 2428 (allowing States to choose from two alternatives, both of which violate the Tenth Amendment, does not cure Tenth Amendment violation). *See also id.* at 2431-32 (States cannot consent to Tenth Amendment violation).

The mandate provisions of the Brady Act do not limit themselves to commandeering low-level, line employees, such as clerks in a motor vehicle licensing bureau. Rather, the Act conscripts sheriffs and chiefs of police, who are expected to exercise substantial discretion in performing important policy-making decisions. When a state appointee is "in a position requiring the exercise of discretion concerning issues of public importance," this Court has been especially careful to police the boundaries of federal intrusion under the Commerce Clause. *See Gregory v. Ashcroft*, 501 U.S. 452, 464, 467 (1991) (applying "plain statement" rule so as to construe federal Age Discrimination in Employment Act not to apply to state judges). Even more so than police chiefs, sheriffs are charged by the People of the States with exercising policy-making discretion, for the sheriffs are generally elected directly by the People.

As for the lower-ranking officers and deputies who are indirectly conscripted by the Brady Act, "Police officers in the ranks do not formulate policy, per se, but they are clothed with authority to exercise an almost infinite variety of discretionary powers." *Foley v. Connelie*, 435 U.S. 291, 297 (1978). Thus, "[p]olice officers very clearly fall within the category of 'important nonelective . . . officers who participate directly in the . . . *execution* . . . of broad public policy.'" *Id.* at 300 (emphasis in original; quoting *Sugarman v. Dougall*, 413 U.S. 634, 647 (1973)). As a whole, "The police function fulfills a most fundamental obligation of

government to its constituency." *Id.* Thus, congressional attempts to control state and local law enforcement officers must be scrutinized even more carefully and skeptically than efforts to control ordinary state employees.[12]

A statute in which Congress takes all the credit, while the States are forced -- under threat of criminal prosecution of its employees -- to perform literally millions of hours of unfunded work could hardly be characterized as "de minimis."[13] The mandate provisions of the Brady Act are *sui generis* in their blatant conscription of state and local officials to implement a federal program. To uphold the mandate provisions of the Brady Act will inevitably encourage Congress to push the envelope further.

The mandate provisions of the Brady Act impose a significant burden on state resources and state sovereignty and represents a clear violation of the Tenth Amendment.

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[12] *Accord Younger v. Harris*, 401 U.S. 37, 44 (1971) (recognizing importance to "Our Federalism" of non-interference with state judicial functions).

[13] One could at least argue that federal requirements that States report facts which are already known to them, such as known cases of missing children, and known traffic fatalities, are de minimis. The burden of reporting known facts is far less than the burden of ascertaining facts which are not known to the State. Of course, federal requirements that state officers perform federal work are not really de minimis, especially when they are coercively enforced through criminal or civil sanctions.

## III. THE COMMANDEERING OF STATE AND LOCAL OFFICIALS VIOLATES THE GUARANTY CLAUSE.

The Guaranty Clause, U.S. Const. art. IV, § 4, guarantees to the States a republican form of government. *See New York v. United States*, 112 S. Ct. at 2432-33. The "distinguishing feature" of a republican form of government "is the right of the people to . . . pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to the those of the people themselves." *Baker v. Carr*, 369 U.S. 186, 222 n.48 (1962) (*quoting In re Duncan*, 139 U.S. 449, 461 (1891)).

The mandate provisions of the Brady Act violate the Guaranty Clause. First, State control over state government expenditures is protected by the Guaranty Clause. *See Brown v. EPA*, 521 F.2d 827, 840 (9th Cir. 1975), *vacated and remanded for consideration of mootness*, 431 U.S. 99 (1977).[14] The ability of state citizens to manage their local law enforcement through republican means is derogated if local law enforcement must spend its time carrying out federal directives, rather than programs democratically chosen by the local electorate.

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[14] When the case was before the Supreme Court, the Solicitor General effectively admitted that EPA's regulations, which forced the states to enforce particular pollution laws, were illegal. Brief for Federal Parties at 20 n.14, *EPA v. Brown*, 431 U.S. 99 (1977) (Nos. 75-909, 75-960, 75-1050, 75-1055) (Secretary "concedes the necessity of removing from the regulations all requirements that the States submit legally adopted regulations; the regulations contain no requirement that the State adopt laws.").

Second, the Guaranty Clause also ensures that the States be accountable only for their own acts. Essential to a republican form of government is that "state government officials remain accountable to the local electorate." *New York v. United States*, 112 S. Ct. at 2433. *See also* D. Merritt, *Republican Governments and Autonomous States: A New Role for the Guarantee Clause*, 65 U. Colo. L. Rev. 815 825 (1994) ("The body that reaps electoral credit for an initiative should also bear the risk of any political fall-out; otherwise the representatives do not have the appropriate incentives for weighing the costs and benefits of a program.") The mandate provisions of the Brady Act destroy such accountability by requiring state and local law officials to administer and "take the heat" for Congress' regulatory program.

The Ninth Circuit belittled these Guaranty Clause principles by claiming that the Brady Act represents a "minimal interference with state functions" and by hypothesizing that since the Brady Act received a great deal of national publicity, the public will know that the federal government is responsible, and assign all relevant blame accordingly. The "de minimis" point has been already discussed. The point that the "public will know who to blame" is not only irrelevant, it is belied by the facts. In a poll conducted when the Brady Act was enacted, 27% of respondents knew nothing about the Brady Act; 30% could only identify it as a "gun control" bill.[15] In any event, it is unlikely that a disgruntled individual who is denied the opportunity to purchase a handgun will take out his frustrations on Congress rather than the Sheriff who effectively blocked his purchase.

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[15] Luntz Weber Research and Strategic Services, *A National Survey on Crime, Violence, and Guns* June 1993.

## IV. THE COURT SHOULD OVERRULE *GARCIA*.

The Second and Ninth Circuits found *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985) persuasive authority to uphold the constitutionality of the Brady Act, despite its obvious defects.[16] There are also those who believe *Garcia* sets the appropriate standard for assessing even those legislative acts that are directed at the States in contrast to laws of general applicability. *Cf. New York v. United States*, 112 S. Ct. at 2420 *with id.* at 2443-44 (White, J., concurring in part and dissenting in part) (describing how the "more appropriate analysis should flow from *Garcia*"). In order to provide lower courts with clear direction as to their duties in enforcing the Tenth Amendment, this Court should now formally overrule *Garcia*.

*Garcia's* Tenth Amendment standard, based on reliance upon the political process to protect state sovereignty, is simply ineffective and inconsistent with our Constitution. The mandate provisions of the Brady Act imposed on the States by Congress exemplify this. Moreover, one federal district court has recognized *Garcia's* limitations in checking congressional excesses in dealing with the issue of crime:

> [T]he *Garcia* Court's confidence in the political process to deter the zeal of Congress to centralize prosecutorial power may have been too optimistic. Indeed, apparently irresistible political pressures to be perceived as "tough

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[16] The Second Circuit upheld the mandate provisions of the Brady Act, in part, in reliance upon what the court characterized as the "structural, not substantive" test adopted initially in *Garcia*. *Frank v. United States*, 78 F.3d 815, 826-27 (2d Cir. 1996).

> on crime" are driving Congress to federalize crimes . . . in circumstances when clear-minded, objective analysis can discern no meaningful effect on interstate commerce in the sense intended by the Commerce Clause.

*United States v. Ornelas*, 841 F. Supp. 1087, 1093 (D. Colo. 1994), *rev'd mem.*, 56 F.3d 78 (10th Cir. 1995).

Given federal budget limitations, the temptation for Congress to help itself to state resources is indeed irresistible:

> If Congress is allowed gratuitously to order the states to perform federal tasks, it will not have to pay for what it gets. As ideas for federal projects grow but resources lessen, the incentives will grow stronger for Congress to command the state government to perform federal programs for free.

J. Lipner, *Imposing Federal Business on Officers of the States: What the Tenth Amendment Might Mean*, 57 Geo. Wash. L. Rev. 907, 929 (1989).[17]

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[17] *See also* D. Merritt, *The Guarantee Clause and State Autonomy: Federalism for a Third Century*, 88 Colum. L. Rev. 1, 17 (1988) ("Congress has recently forced state and local governments to administer national programs at state expense. This technique permits Congress to escape fiscal accountability for its actions."); R. Rotunda, *The Doctrine of Conditional Preemption and Other Limitations on Tenth Amendment Restrictions*, 132 U. Pa. L. Rev. 289, 312 (1984) ("If the federal government is willing to assume the full burdens of direct regulation it will not impose regulations without carefully considering the costs involved.").

The temptations underlying the Brady Act for Congress to conscript state resources will continue to manifest themselves so long as *Garcia* remains viable. That case has proved to be unworkable, as exemplified by the litigation over the Brady Act, and should be expressly overruled. The Nation would be better served if this Court adhered to the bright-line, no-commandeering standard adopted in *New York v. United States*.

## CONCLUSION

Nothing in the Constitution gives Congress the authority to order a massive conscription of state and local law enforcement officials to serve federal purposes. Such conscription violates the Tenth Amendment and deprives the States of a republican form of government. Accordingly, the judgment of the court below should be reversed.

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